THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NO.12119 OF 1994

DATED: 20-10-2005

BETWEEN:

Indira Gandhi Central Christian Institution

Of Medical Sciences and another

..... Petitioners

and

Principal Secretary, Medical and Sciences and others

... Respondents

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NO.12119 OF 1994

O R D E R

Heard both the counsel.

2. This writ petition is filed to direct the respondents to pay damages to the extent of 50 lakhs for the property lost in the police custody and also interest from the date of seizing the property till the date of payment and also to release the immovable property to the petitioner.

3. In the affidavit filed in support of the writ petition it is stated that the petitioner formed into a society under A.P.(Telangana Area) Public Societies registration Act 1350 fasli and requested the then Prime Minister to grant permission to establish Christian University in Andhra Pradesh and that the 1st petitioner received the letter from the Prime Minister within 15 days and as per the directions of the Government of India, in the above letter, the 1st petitioner established a Christian Medical College at Hyderabad. The petitioner sought for affiliation for the college from the Osmania Univesity. As per the reply directions to run the Medical College, the petitioner No.1 advertised for appoint of principle and other staff. The petitioner no.1 made representation for permission to start the medical college. It was endorsed on the representation of the petitioner – college that the opening of private medical college as per the directions of the Government of India and Medical Council of India, is not possible. The tenor of the affidavit filed in support of the writ petition appears to be that pursuant to the complaint of the 1st respondent, the 4th respondent seized the property on 7.5.1986 worth Rs.50 lakhs movables and worth Rs.1 crore immovable property belonging to the 1st petitioner. It is stated that the police are bound to protect the property. Surprisingly the respondent police on 14.6.19900 gave a private complaint stating that the immovable property is lost and F.I.R.

is registered at P.S. Punjagutta on 14.6.1990 for the offences under Sections 457 and 380 I.P.C. The respondents did not co-operate to recover the lost property. Therefore, the petitioner having no other alternative, filed the present writ petition for the above said reliefs.

4. The 4th respondent filed counter and stated that the allegations made by the petitioner do not disclose any valid or substantial grounds for grant of any relief under Article 226 of the Constitution of India. It is stated that the C.I.D. Police have filed a charge-sheet against the 1st petitioner for violation of rules and regulations of 3, 4 (2), 5, 7, 86 and 87 of A. P. Education Act, read with Section 420, 120-B I.P.C vide C.C.No.137/94. The trial was concluded before the III Metropolitan Magistrate, Hyderbad and the same ended in acquittal on 18.12.1995 and the State preferred appeal in Crl.A.No.805/1996 before this court and the same is pending. Rs.30,00,000/- worth property was seized and deposited in the court of XVII Metropolitan Magistrate, Hyderabad and the same property was kept in the building under the Police guard and obtained receipt from the Head Constable No.478, Sri Syed Zaheeruddin of City Armed Reserved, Headquarters, Hyderabad, who was the in-charge of the guard. The guard was withdraw without intimation to C.I.D. police and the theft occurred during the period of withdrawal of the guard. On the complaint of Dy. Superintendent of Police, Sri G.Vitthal Reddy of C.I.D., City Zone, a case in Crime No.281/90 under Section 457/380 I.P.C. of Police Station, Punjagutta was registered on 14.6.1990. It is stated that the grant of damages against this respondent does not arise, since the action is taken while discharging the lawful duties on behalf of the State Government and

that writ petition is not maintainable under Article 226 of the Constitution of India since it is a disputed question of fact. It is stated that III Metropolitan Magistrate, Hyderabad ordered return of cash paid by the students after expiry of appeal. However, the State preferred the appeal and the same is pending before this court. It is stated that the return of the property is dependent on the result of criminal appeal. With these averments, the 4th respondent sought for dismissal of the writ petition.

5. The 4th respondent also filed additional counter affidavit and the petitioner also filed reply.

6. From the above averments it could be seen that the 1st petitioner started a college without permission and gave admission to students. Pursuant to the complaint given by the 1st respondent – Government, its properties were sized and the property was kept under the custody of XVII Metropolitan Magistrate, Hyderabad and a police guard was posted. The guard was withdrawn without intimation to CID Police and theft occurred during the period of withdrawal of the guard and complaint in Crime NO.281/1990 under Sections 457/380 I.P.C. was filed in Punjagutta Police station. Against the members of the 1st petitioner – College, criminal case in C.C.No.137/1994 on the file of III Metropolitan Magistrate, Hyderabad was filed and the same ended in acquittal on 18.12.1995 and the learned Metropolitan Magistrate also gave directions with regard to return of cash paid by the students/property, after the expiry of appeal period. In the counter filed by the 4th respondent it is stated that the return of the property of the 1st petitioner is dependent on the out come of the appeal in

Crl.A.No.805/1996. On enquiry, this court found that the Crl.A.No.805/1996 was disposed of on 8.8.2003. Therefore, it is for the 1st petitioner to work out its remedies in accordance with law and this court sitting under Article 226 of the Constitution of India cannot direct for the release of the property.

7. Further with regard to the claim of damages is concerned, it is to be seen that no doubt the property of the 1st petitioner which is in custody of the court was lost and accordingly police complaint was given. Without there being any evidence, no liability can be fastened and this court sitting under Article 226 of the Constitution of India cannot undertake such a course. Further the Apex Court in catena of judgments held that money claims cannot be entertained under the writ jurisdiction.

8. For the foregoing reasons, I do not find any merit in the writ petition and the same is accordingly dismissed. No costs.

AVS ----------

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